

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 8, “Waiver or Variance of Rules,” Chapter 90, “State Licensed Warehouses and Warehouse Operators,” and Chapter 91, “Licensed Grain Dealers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 159.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This proposed rule making implements 2020 Iowa Acts, House File 2389, by removing references to “variances” within Chapters 8, 90, and 91 and updating the process by which the Department publishes rule waivers.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **21—Chapter 8**, title, as follows:

WAIVER OR VARIANCE OF RULES

ITEM 2. Amend rule 21—8.1(17A,159) as follows:

21—8.1(17A,159) Definition. For purposes of this chapter, a “waiver or variance” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 21—8.4(17A,159) as follows:

21—8.4(17A,159) Criteria for waiver or variance. In response to a petition completed pursuant to rule 21—8.6(17A,159), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 21—8.12(17A,159) as follows:

21—8.12(17A,159) Summary reports Submission of waiver information. ~~Semiannually, the department shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the department shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 5. Amend rule 21—90.1(203C) as follows:

21—90.1(203C) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203C.5.

ITEM 6. Amend rule 21—91.1(203) as follows:

21—91.1(203) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are

subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203.2.